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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,856	07/03/2003	James D. Webb	P-8888.05	4405
27581	7590	11/20/2008		
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER MANUEL, GEORGE C	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/612,856	Applicant(s) WEBB ET AL.	
	Examiner George Manuel	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-26 is/are pending in the application.
- 4a) Of the above claim(s) 9-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8/28/08 have been fully considered but they are not persuasive. Contrary to Applicant's assertion that Njemanze does not disclose or suggest a portal interface, Niemanze discloses the system can be programmed to automatically access the Internet 14 and use the "File Transfer Procedure" (FTP) to move files containing information that may include spectral data, microembolic signal rate, patient personal data, equipment serial number and lot number to the attending physician or emergency medical service personnel. Conversely, the attending physician 15 can alter the program of the system including pump bolus dose discharge rate, insonation depth, new artifact exclusion criteria, and even review records on microembolic signal rate before and after each drug delivery regimen.

Applicant argues that the procedures disclosed in Njemanze could include merely moving files via the Internet "to a physician or medical personnel" via sending an email with an attachment to a physician. This is equivalent to what is disclosed in Applicant's specification, "If there are tachy-triggered events the device information network for example, IHM 100, will notify the designated person, for instance a nurse, doctor or health provider electronically that events have occurred by email, pager or other means." See paragraph 56.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., a protocol for moving files) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The possibility that failure of cerebrovascular flow mechanisms may not be accompanied by a fall in mean arterial blood pressure does not teach away from including blood pressure monitoring. Since strokes are known to be caused by high blood pressure, the disclosure in Njemanze supports the argument for monitoring blood pressure in that failure of cerebrovascular flow mechanisms may be accompanied by a rise in mean arterial blood pressure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3, 4, 6 and 7 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Njemanze (US 6,468,219).

Njemanze discloses a transcranial Doppler ultrasound device adapted to be surgically implanted in the body of a patient. Transducer 16 monitors the hemodynamic

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conditions of the patient. The system can be programmed to automatically access the Internet 14 and use the "File Transfer Procedure" (FTP) to move files containing information that may include spectral data, microembolic signal rate, patient personal data, equipment serial number and lot number to the attending physician or emergency medical service personnel.

Regarding claim 6, the examiner is interpreting a blood flow measurement to comprise a measurement that relates to pulmonary pressure and heart rate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Njemanze (US 6,468,219).

Njemanze shows all of the claimed features except for measuring blood pressure values or enabling access to various zones including a dedicated public zone, confidential zone and a private zone.

While Njemanze does not specifically mention measuring blood pressure values, one of ordinary skill in the art would have found it obvious to adapt the blood flow

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monitoring to include blood pressure monitoring because blood pressure is a function of blood flow through a vessel and because blood pressure is a critical factor in monitoring a patient's susceptibility to stroke.

Regarding claims 8 and 24, one of ordinary skill in the art would have found it obvious to enable access to various zones or pages including a dedicated public zone or section, confidential zone or physician section and a private zone or patient section because Njemanaze teaches restricted Internet access may be accomplished via specified websites that ensure strict compliance with the ethical codes implicated in the patient care services.

Regarding claim 25 and 26, monitor 11 provides a display for the physician to view cardiac pressure trend data.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

/George Manuel/
Primary Examiner
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